



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2016-0195; 9944-98-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Proposed Consent Decree; Request for Public Comment

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed consent decree to address a lawsuit filed by the State of Nevada and the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection (collectively “Plaintiffs”) in the United States District Court for Nevada: State of Nevada, et al., v. McCarthy, No. 3:15-cv-00396-HDM-WGC (D. Nev.). On July 31, 2015, Plaintiffs filed this complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), failed to perform a non-discretionary duty to take final action on the portion of Nevada’s state implementation plan (“SIP”) submission intended to address interstate transport requirements for the 2008 ozone national ambient air quality standards (“NAAQS”). The proposed consent decree would establish a deadline for EPA to take certain specified actions.

DATES: Written comments on the proposed consent decree must be received by [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2016-0195, online at www.regulations.gov (EPA’s preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; or by hand

delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Zachary Pilchen, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-2812; fax number (202) 564-5603; email address: pilchen.zach@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree.

This proposed consent decree would resolve a lawsuit filed by Plaintiffs seeking to compel the Administrator to take action under CAA section 110(k)(2)–(3). Plaintiffs allege that the Administrator has failed to perform a non-discretionary duty to take final action on the portion of Nevada’s SIP submission intended to address the requirements of 42 U.S.C. 7410(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. Under the terms of the proposed consent decree, EPA would agree to take certain specified actions by February 13, 2017 to resolve those claims. See the proposed consent decree for more details. The proposed consent decree also provides for the possibility that circumstances beyond EPA’s reasonable control could delay compliance with the February 13, 2017 deadline, and provides a framework for extending that deadline. In addition, the proposed consent decree enumerates Plaintiffs’ costs of litigation, including attorney fees, and provides that payment of those costs will constitute a full and

complete settlement of all of Plaintiffs' costs in connection with this litigation.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional information about commenting on the proposed consent decree.

A. How Can I Get A Copy Of the Proposed Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2016-0195) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use the www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket

identification number then select “search.”

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of

the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 6, 2016.

Lorie J. Schmidt

Associate General Counsel

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